

# **EXHIBIT C**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

THCI COMPANY, LLC, )  
 )  
 Plaintiff, )  
 )  
 v. ) C.A. No. 04-367 (GMS)  
 )  
 ABE BRIARWOOD CORP., )  
 )  
 Defendant. )

## ORDER

WHEREAS the Defendant in the above-captioned action filed a motion to dismiss the Plaintiff's complaint based, in part, on the Plaintiff's alleged failure to comply with Fed. R. Civ. P. 13(a) (D.I. 5 at 3-4);

WHEREAS "the objective of Rule 13(a) is to promote judicial economy, so the term 'transaction or occurrence' is construed generously to further this purpose," *Transamerica Occidental Life Ins. Co v Aviation Office of Am., Inc.*, 292 F.3d 384, 390 (3d Cir. 2002);

WHEREAS “[f]or a claim to qualify as a compulsory counterclaim, there need not be precise identity of issues and facts between the claim and the counterclaim; rather, the relevant inquiry is whether the counterclaim bears a logical relationship to an opposing party’s claim,” *id.* at 389 (citations omitted);

WHEREAS the Plaintiff explicitly acknowledges the logical relationship between the claims in the present case and the so-called "Missouri Complaint" previously filed by the Defendant and subsequently transferred to this court (D.I. 7 at 3); and

WHEREAS the appropriate remedy for failure to comply with Rule 13(a) is dismissal under Rule 12(b)(6), *see MBIA Ins. Corp. v. Royal Indem. Co.*, 294 F. Supp. 2d 606, 613 (D. Del. Mar. 31, 2003).

IT IS HEREBY ORDERED THAT:

1. The Defendant's motion to dismiss (D.I. 5) be GRANTED without prejudice as to the Plaintiff's ability to reinstate its claims as counterclaims in the "Missouri Complaint," and
2. The Plaintiff's motion to consolidate (D.I. 8) be DENIED as moot.

Dated: September 26, 2005



UNITED STATES DISTRICT JUDGE

